

of protecting children from programming that is largely commercial in nature.

The Commission's new definition of a program-length commercial is "a program associated with a product in which commercials for that product are aired."⁵⁵ This regulation has ignored a primary purpose for prohibiting PLCs directed at children: the confusion caused when programming material is intermingled with commercial material.⁵⁶ The definition has failed to accomplish any meaningful objective while creating a huge and obvious loophole that facilitates unprecedented levels of commercialization within children's program content. Under this policy, it would be possible for a program to include virtually unlimited product promotions within the body of the show so long as the broadcaster did not present any traditional "spot" advertisements for the program-related products during or adjacent to the show.

This loophole is now being seized by toy manufacturers. Some recent examples of shows that promote children's products include "Sonic the Hedgehog," which is based on a child's videogame, "Biker Mice from Mars," and "Mighty Morphin Power Rangers." On Thanksgiving evening, Toys-R-Us presented a half

⁵⁵Children's Television Order, 6 FCC Rcd at 2117. On reconsideration, the Commission modified its rules to require that "commercial material be separated from a children's program to which it is related by intervening and unrelated program material." 6 FCC Rcd at 5099.

⁵⁶Children's Television Report & Policy Statement, 50 FCC 2d at 14-18.

hour program entitled "Nick and Noel" in which the main characters of the show are a dog and a cat. Toys-R-Us is selling stuffed animal versions of Nick and Noel, and is heavily promoting both the toys and the program in print advertisements.⁵⁷.

The effects of excessive advertising are felt strongly by children. Because the child audience is only a small segment of the viewing audience, broadcasters show only a limited amount of programming explicitly for children. Excessive commercials and product-based PLCs take away limited time which could instead be spent on more educational or informative programming for children.

Full-length programs based on products and other advertiser-controlled shows for children also threaten program integrity. When the Commission originally prohibited PLCs directed at children, one of its concerns was that programming in the public interest could be subordinated to programming in the interest of salability.⁵⁸ That, in fact, has happened. Information filed with the Commission contains examples of how children's programs have been changed at the toy manufacturer's request to present the toy in a more favorable light.⁵⁹ The recent example of the

⁵⁷Howard Rosenberg, Not Your Standard Christmas Special, L.A. Times, Nov. 17, 1993, at B8.

⁵⁸See supra at note 45.

⁵⁹Reply Comments of Action for Children's Television, et al. in MM Docket No. 83-670 at 6, 9-10 and attachments (describing how toy companies have retained the right to approve scripts before they are aired, and have made changes, including modifying

Toys-R-Us Christmas special shows how an advertiser has gone so far as to actually produce a show based on toys it sells, and then buy time on stations to air it.⁶⁰

Toy manufacturers are reaping quite a profit from toy-based children's shows. The repeal of regulation prohibiting these types of shows materially benefitted toy companies. While total toy industry revenues remained relatively unchanged from 1979 to 1983,⁶¹ revenues rose after deregulation from \$5.3 billion in 1983 to \$8.3 billion in 1984.⁶² This 54% increase can be attributed in part to toys related to television shows.⁶³

We ask that the Commission expand the current proceeding to include the area of commercialism directed at children. Because the current PLC definition is inadequate, the Commission should change that definition to better protect the interests of children.

II. The Commission Should Investigate The Harmful Effects Of Its 1984 Deregulation Order.

The Commission has not, to date, studied the effects of its decision ten years ago to remove commercial limits. The FCC has a duty to ensure that licensees are not broadcasting excessive

characters to conform to the actual toys, and introducing other characters to enhance sales rather than to improve the story).

⁶⁰Rosenberg, supra note 62.

⁶¹Connie Kirk-Karos, An Economic Analysis of Toy-Based Programming & Advertising Since Broadcast Deregulation in the 1980s 21 (1992) (unpublished M.A. thesis, New York University).

⁶²Id.

⁶³Id.

amounts of commercial matter to the detriment of the public viewers, and in contravention of the long standing public interest standard. To this end we recommend that the Commission study the amount and type of current commercial material being broadcast and determine what constitutes excessive commercialism. We also urge the FCC conduct a study and initiate a public hearing to examine the effects of ever-increasing levels of broadcast commercialism on the values and behavior of viewers. In addition, the Commission should: require broadcasters to keep meaningful records concerning their commercial practices; update the sponsorship identification rules to reflect current commercial practices; and revise its rules to better protect children from deceptive product-based shows.

A. The FCC Has A Duty To Study The Effects Of Its 1984 Deregulation Decision.

The Commission indicated when it deregulated broadcast stations that it would monitor the results of its decision and if necessary "revisit" the area through an inquiry or rulemaking proceeding.⁶⁴ The excess of commercials and the resulting deception described above suggest that it is time for the Commission to revisit this issue. While the NOI is a good start, CSC et al. believe that the Commission must conduct a study into this area. In conducting the study, the Commission should determine how much commercial matter is currently being broadcast

⁶⁴Radio Deregulation, 84 FCC 2d 968, 1008, 1011-12 (1981); Television Deregulation, 98 FCC 2d at 1109-1110. See also Office of Communication v. FCC, 707 F2d at 1442 (noting importance of reviewing the consequences of deregulation).

and, in particular, the amount of time devoted to 1) commercial and other promotional spots, 2) paid programming such as infomercials, and 3) home shopping. Furthermore, the Commission, by means of a public hearing or other means, should initiate an inquiry into the effects of a heavy, continuous dose of advertising on viewers' attitudes and behavior. The FCC should consult with academic and other psychologists, marketing experts, and sociologists to obtain expert opinion and any relevant studies on this critically important matter.

With this information, the Commission be able to determine an acceptable level of advertising and to establish appropriate commercial limits for broadcasters. Limits should be defined so as not to allow broadcasters to "load" all advertising into periods of high viewership, subordinating public interest programming to times of low viewership.⁶⁵

B. Broadcast Stations Should Be Required To Keep Meaningful Records.

Some method of recordkeeping is necessary for the Commission and the public to track the amount of commercial material being broadcast. We do not believe that it is necessary for the

⁶⁵In addition to considering limits on advertising, the FCC should consider whether broadcasters should be required to provide an antidote to the advertising. For instance, if the FCC finds that advertising promotes selfishness, spendthriftiness, materialism, and other values that impact adversely on our democratic society, the FCC could require broadcasters to run a certain amount of programming or public-service announcements that encourage more highly valued traits, such as cooperation, sharing, volunteerism, and community support.

Commission to reinstate the previous logging requirement. Instead, as described below, the Commission should require stations to make available the information necessary to ensure that the station has not aired an excessive amount of commercial matter, has given adequate disclosure to viewers, and has not been unduly influenced by advertisers in its other programming.

1. Certain Basic Information Should Be Maintained As Part Of A Station's Public File.

The Commission and the public need to have access to certain basic information about television advertising. Thus, each station should maintain in its public file a daily list of the total number of minutes per hour devoted to commercial spots. This information should be made available upon request from the Commission or members of the public. Because universally employed computer technology has greatly reduced the cost and burden of maintaining such data, and since stations keep track of this information for purposes of selling and billing time to advertisers, this requirement will not be overly burdensome for licensees.

In addition to disclosing the number of minutes sold for commercial spots, stations should provide a list of all other programming which directly or indirectly promotes products or services for which consideration is paid, either to the licensee, or to others. This requirement should include the television shows and movies shown on TV which contain undisclosed product placements, and the sporting events named after product sponsors. The list should include a brief description of the type of

programming, how long it was on the air, how many times it was broadcast, the dates and times it was broadcast, and other basic information describing the programming.

Stations should also report the number of hours per day devoted to the benefit of the licensee. For example, this number would reflect the amount of time devoted to home shopping programs, station self-promotions or cross-promotions, and other paid programming for which the licensee receives consideration.

Also included in the records of a station should be a list of all blocks of time greater than 15 minutes sold to advertisers. The broadcaster should be required to provide a description of the advertiser, amount of time in the block, dates and times broadcast, and any other relevant information. This category would include blocks of time sold to advertisers who broadcast infomercials greater than 15 minutes in length.

2. The FCC Should Monitor Improper Advertising Pressure.

As discussed above, the public interest is not served when advertisers exert an undue amount of influence on the noncommercial programming being broadcast. For this reason, broadcasters should be required to implement rules or procedures to deal with improper advertising pressure, if none currently exist. These procedures should be written down and placed in the stations' public files.

For the Commission to be able to monitor this problem successfully, broadcasters should also be required to notify the FCC of any programming change, correction run, or remedial

programming broadcast in response to a request from an advertiser. The stations should have an affirmative duty to report this information to the Commission, because unlike in the commercial limits area, the public cannot serve as a check on the stations. Viewers will know if a station has run an excess amount of commercial material and can then check up on the stations through the public files. However, members of the public will not know about undue advertising pressure, and therefore will not think to check for it. Also, a reporting requirement for undue advertising pressure can be used as a shield by broadcasters to protect themselves. Licensees can let advertisers know, if pressure is threatened, that the conduct will have to be reported.

C. The FCC Should Update Its Sponsorship Identification Rules To Address Current Commercial Practices.

It is a basic principle that viewers should know when they are being subjected to advertising, and who is paying for the advertising.⁶⁶ Congress amended section 317 in 1960 to require disclosure when advertisers pay for favorable use or depiction of their products on broadcast stations.⁶⁷ Three petitions, currently pending before the Commission, illustrate examples of broadcasts that do not adequately inform viewers of the paid sponsorship of the program by advertisers.⁶⁸ Thus, at a minimum,

⁶⁶Applicability of Sponsorship Identification Rules, 40 FCC 141 (1963).

⁶⁷47 U.S.C. § 317 (1992).

⁶⁸See supra note 1.

the Commission should grant the relief requested in the OC/UCC Petition, Infomercial Petition, and Motion Picture Petition.⁶⁹

1. Infomercials Contain Inadequate Sponsorship Identification Which Is Given Only Intermittently Throughout The Broadcasts.

The current practice of sponsorship identification in infomercials does not adequately inform viewers of the commercial nature of the programs. Infomercials do not run a continuous notice of their advertising nature, but typically advise viewers that they watching are paid-for-programming only at the beginning of the program and prior to any ordering opportunities. Unwary viewers who tune in after the show has started may not realize that they are watching advertisements for a product or service.⁷⁰ The Commission should clarify its rules to require the display of the sponsor of the program at all times that the infomercial is on the air.

2. Broadcast Programs Contain Many Advertisements For Which Consideration Is Given, But No Sponsorship Identification Is Made.

As discussed above, currently no sponsor identification announcement is required when consideration is paid to movie

⁶⁹As the commenters pointed out in their November 1, 1993, letter to the Commission, see supra note 1, the Motion Picture Petition has been pending since March 29, 1989, and the Infomercial Petition has been pending since January 3, 1992. To date, the Commission has taken no action on either. Because the Commission has declined to include these petitions in Docket 93-254 as requested, the petitioners now consider their administrative remedies to be exhausted and will treat the Commission's inaction as a denial for purposes of pursuing judicial relief.

⁷⁰Infomercial Petition, supra note 23.

producers for placement of a product in a movie that is later broadcast on television. This form of advertising is deceptive and contrary to the public interest. The Commission should rescind the waiver afforded movies broadcast on TV in order to make people aware that products are being advertised to them while they watch movies on television and require that there be conspicuous disclosure every time a paid product placement is depicted.⁷¹

Product placement companies are currently placing products on television shows as well, which should trigger sponsorship identification. The Commission should investigate the extent of this practice and whether its sponsorship rules are being ignored, remind broadcasters of their obligations, strictly enforce existing requirements, and consider whether additional productions are needed to ensure that the public is adequately informed when it is being persuaded and by whom.

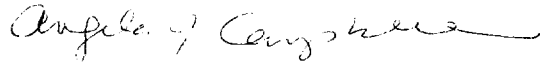
CONCLUSION

For the reasons discussed above, CSC et al. ask that the Commission 1) conduct a study of commercial practices on broadcast television; 2) require broadcasters to maintain and make available to the public records necessary for determining the amount of all types of commercial matter broadcast on their stations, 3) update the sponsorship identification rules with regard to infomercials and product placements to require

⁷¹See Motion Picture Petition, supra note 1.

meaningful public disclosure, and 4) revise its definition of PLCs directed at children.

Respectfully submitted,



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